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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GERALD ARMSTRONG,

CASE NO. CV-N-97-00670 ECR (RAM)

Plaintiff,

vs.

MEMORANDUM OF POINTS AND
AUTHORITIES OF DEFENDANTS
CHURCH OF SCIENTOLOGY OF TEXAS
AND CATHY NORMAN IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
COMPLAINT

DAVID MISCAVIGE and CATHY
NORMAN, individuals; CHURCH OF
SCIENTOLOGY INTERNATIONAL, a
California corporation; the RELIGIOUS
TECHNOLOGY CENTER, a California
corporation; the SEA ORGANIZATION,
a California based unincorporated entity;
and the CHURCH OF SCIENTOLOGY
OF TEXAS, a Texas corporation,

Defendants.

Defendants Church of Scientology of Texas ("CST") and Cathy Norman ("Norman"), by their undersigned counsel, submit this Memorandum of Points and Authorities in support of their Motion to Dismiss for lack of subject matter jurisdiction; lack of personal jurisdiction; improper venue; and because Plaintiff is a fugitive from justice, is in contempt of court, and has fled from a bench warrant issued by the Superior Court of California, Marin County.

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PRELIMINARY STATEMENT

So as not to burden this Court with unnecessary papers, CST and Ms. Norman hereby adopt the State of Facts and Points I, III and IV of the Memorandum of Points and Authorities of Defendant Church of Scientology International in Support of Defendants' Motion to Dismiss Complaint (hereinafter "CSI Memorandum"). In addition to the grounds set forth in the CSI Memorandum, Armstrong's Complaint should be dismissed because this Court lacks personal jurisdiction over Defendants CST and Norman. Plaintiff's Complaint is devoid of any allegations connecting CST or Ms. Norman in any way whatsoever to Nevada, either directly or indirectly. Ms. Norman, as Plaintiff concedes, is a resident of Texas (Comp. ¶1), and CST is a Texas corporation (*id.*, ¶9). The act forming the basis of the Complaint concerns the sending of an allegedly defamatory letter from Texas to Alabama; Plaintiff alleges no publication or distribution to anyone in Nevada. As there are no contacts between Defendants CST or Norman and Nevada, there is absolutely no basis for this Court to exercise personal jurisdiction over them. Indeed, Plaintiff does not even allege personal jurisdiction.

STATEMENT OF JURISDICTIONAL FACTS

As set forth in Ms. Norman's declaration, Ms. Norman is the Executive Director of the Church of Scientology of Texas in Austin, Texas. Ms. Norman lives and works in Texas. She has no offices, employees, or agents in Nevada, and has never carried on or conducted any business in Nevada. Indeed, she never has been in Nevada in her life. She has never sent any written materials or communications to any person or entity in Nevada, or even communicated by any means with any person in Nevada. She does not own any real or personal property in Nevada, and maintains no bank accounts in Nevada. In short, Ms. Norman has no contacts with the State of Nevada whatsoever and never has.

Nor does CST. As Ms. Norman's declaration establishes, CST is a Texas corporation with its principal (and sole) place of business in Texas. CST has no offices or subsidiaries in Nevada, owns no real or personal property in Nevada, has no bank accounts in Nevada, has no employees in Nevada, is not qualified to conduct business in Nevada.

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ARGUMENT

I. THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE COURT LACKS PERSONAL JURISDICTION OVER DEFENDANTS CST AND NORMAN

This Court lacks personal jurisdiction over Defendants CST and Norman. In view of Plaintiff's failure to plead personal jurisdiction, it is unnecessary for Defendants to do more because "[h]e must allege in his pleading the facts essential to show jurisdiction. If he fails to make the necessary allegations he has not standing." McNutt v. General Motors Acceptance Corporation, 298 U.S. 178, 189, 56 S.Ct. 780, 785 (1936). *See also* Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (quoting and relying on McNutt); Industrial Tectonics, Inc. v. Aero Alloy, 912 F.2d 1090, 1092 (9th Cir. 1990) ("[t]he party asserting jurisdiction has the burden of proving all jurisdictional facts [citing McNutt]. Plaintiff's utter failure to allege any facts to show personal jurisdiction compels dismissal of the Complaint.

Assuming *arguendo* Plaintiff had made an allegation that personal jurisdiction existed, "[w]hen a Defendant moves to dismiss for lack of personal jurisdiction, the Plaintiff is 'obligated to come forward with facts, by affidavit or otherwise, supporting personal jurisdiction.'" Scott vs. Breeland, 792 F.2d 925, 927, (9th Cir. 1986). Here, as the Complaint on its face and the accompanying declaration of Ms. Norman demonstrate, Plaintiff cannot come forward with facts supporting personal jurisdiction over CST or Ms. Norman because there are none. Plaintiff clearly states in his Complaint that Defendant CST is a Texas corporation (Comp. ¶ 6), that Defendant Norman is a citizen of Texas. (Comp. ¶¶1,10), and that the act which triggered the Complaint was the mailing of a letter from Texas to persons in Alabama (Comp. ¶20). Plaintiff does not allege any distribution, publication, or other effect in Nevada.

The declaration of Cathy Norman further conclusively establishes that neither Defendant CST nor Defendant Norman has any contacts with Nevada. There are no acts by which Plaintiff could argue that CST or Ms. Norman purposefully availed themselves of the privilege of conducting business with the forum state. Cf. Scott, 792 F.2d at 927 (Plaintiff's allegations of minimum contacts were insufficient to support personal jurisdiction where only links with forum state were boarding a flight to California and declaration that multiple record stores in Los Angeles carried records of Defendants' music).

Therefore, the Complaint should be dismissed on the basis of lack of personal jurisdiction because

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1 Plaintiff fails to allege, and cannot allege, any facts sufficient to constitute a showing of personal jurisdiction
2 over Defendants CST and Cathy Norman.

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4 **CONCLUSION**

5 For the foregoing reasons, Defendants CST and Cathy Norman respectfully request that the Motion
6 for Dismissal of this action be GRANTED.

7 DATED this 20th day of May, 1998.

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